

## REMARKS/ARGUMENT

### Summary of response to August 17, 2007 Official Action

Claims 1, 3, 5-7, 10-12, 21-25, 27-30, 31, 32, 53-59, 61, 63-68, 73, 77-79 remain pending for consideration. The undersigned acknowledges the November 28, 2007 election of Invention Group I for further prosecution. Accordingly, Claims 13-20, 26, 37-44, 46-49, 53-59, 61, 69-72, 74, 75, 76 and 80-82 are now withdrawn from consideration.

### Rejections under 35 U.S.C. § 112

Claims 1, 6, 21 and 31 stand rejected under Section 112. These claims are amended and comply with all requirements under Section 112. Withdrawal of all rejections under Section 112 is earnestly solicited.

### Rejections under 35 U.S.C. § 102(b)

Claims 1, 3, 63, 64, 67 and 68 stand rejected as being anticipated by U.S. Pat. No. 6,296,603 to *Turnlund*.

*Turnlund* is directed to methods for inducing thrombus and/or cell proliferation by endovascular irradiation. In one embodiment, a prosthesis is embedded with radioactive material. According to this embodiment, the objective is to provide a uniform radiation across the length of the prosthesis. According to *Turnlund* the stent design is important in achieving a uniform irradiation. "For example, the denser the stent pattern or number of coils, the more uniform the dose of endovascular radiation". Col. 9, ll. 50-52.

The conclusions drawn in the Official Action find no support in *Turnlund*. FIG. 6 shows the pattern of irradiation of a stent for purposes of explaining the effect a stent pattern has on achieving a uniform irradiation pattern. Indeed, there cannot be any disputing that when FIG. 6 is read in the context of the written description, it is clear that this figure does not disclose or even suggest a "device having an amount of therapeutic agent that gradually decreases along the length of the device", page 5 of the Official Action, because this conclusion flatly contradict the purpose of this illustration and objectives in this reference. *See* col. 9, line 37 to col. 10, line 4.

Anticipation under 35 U.S.C. § 102 requires that each limitation of a claim is found in a single reference either expressly or inherently. *See Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 77 USPQ2D 1321 (Fed. Cir. 2005).

Claim 1 is directed to an apparatus to deliver a therapeutic agent to a vessel, including the feature of an elongated source of a therapeutic agent, the source having an amount or a concentration of the therapeutic agent that gradually decreases along a length of the elongated source from a location inward of a proximal end to or at the proximal end of the elongated source or from a location inward of a distal end to or at the distal end of the elongated source. *Turnland* does not disclose each and every feature of Claim 1. It therefore cannot anticipate this claim.

Withdrawal of the rejection under 35 U.S.C. § 102 is earnestly solicited.

According to a second embodiment of *Turnland*, a central portion of a device has a first radioactive activity and end portions extending beyond the upstream end and the downstream end of the aneurysm, i.e., the area where thrombus and/or cell proliferation is encouraged, with a second radioactive activity generating a second radiation having a dosage adapted to decrease thrombus formation and/or cell proliferation of the affected regions flanking the aneurysm. *See* col. 2, ll. 52-64; *and* col. 10, line 36 through col. 11, line 16. However, nowhere in the discussion of this embodiment does *Turnland* teach or suggest each and every feature of Claim 1, at least because nowhere in the discussion of this embodiment does *Turnland* teach or suggest a concentration of the therapeutic agent that gradually decreases along a length of the elongated source from a location inward of a proximal end to or at the proximal end of the elongated source or from a location inward of a distal end to or at the distal end of the elongated source.

For at least similar reasons to those given above for Claim 1, *Turnland* does not teach each and every feature of Claims 3, 63, 64, 67 and 68. This reference therefore cannot anticipate Claims 3, 63, 64, 67 and 68. Withdrawal of the rejections under 35 U.S.C. § 102 is earnestly solicited.

Rejections under 35 U.S.C. § 103(a)

Claims 5-7, 10-12, 21-25, 27-32, 65, 66, 73 and 77-79 stand rejected as unpatentable under 35 U.S.C. § 103(a) in view *Turnland* and P. Kay et al, *Pattern of restenosis and vascular remodeling after cold-end radioactive stent implantation*, Eur Heart J, 2001, Vol. 22, issue 15, August 2001.

Applicants respectfully point out that at the bottom left-hand side of each page of the Kay article it provides the publication source and with it a publication date, i.e., “Eur Heart J, Vol. 22, issue 15, **August 2001**” (emphasis added). Applicants U.S. filing date is **March 2001**, which is prior to the August 2001 publication date of the Kay article. Accordingly, this article is not a prior art “printed publication” under 35 U.S.C. § 102(a). *See* MPEP § 9128.

The Official Action has failed to establish a *prima facie* case of obviousness under Section 103, at least because it relies upon a publication that is not prior art to Applicants’ invention. Accordingly, the rejection of Claims 5-7, 10-12, 21-25, 27-32, 65, 66, 73 and 77-79 is improper and should be withdrawn. Allowance of Claims 5-7, 10-12, 21-25, 27-32, 65, 66, 73 and 77-79 is earnestly solicited.

In view of the above remarks, Applicants respectfully request that all standing rejections be withdrawn and Claims 1, 3, 5-7, 10-12, 21-25, 27-30, 31, 32, 53-59, 61, 63-68, 73, 77-79 allowed. Allowance of withdrawn Claim 26 is also requested, since it depends from allowable Claim 21.

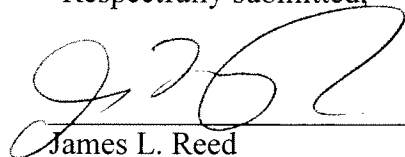
Conclusion

In light of the foregoing claim amendments and remarks, this application is considered to be in condition for allowance, and early passage of this case to issue is respectfully requested. If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 07-1850.

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